

Serial No.: 09/576,094  
Attorney Docket No. 2C03.1-191  
CIBA Docket No.: SU/V-31536A/C1

### REMARKS

By the present Response and Amendment, Claims 21 and 33 are amended and Claims 27 and 35 have been cancelled. New claims 41-46 have been added. Claims 1, 6-10, 21-26, 28-34, and 36-46 are now pending.

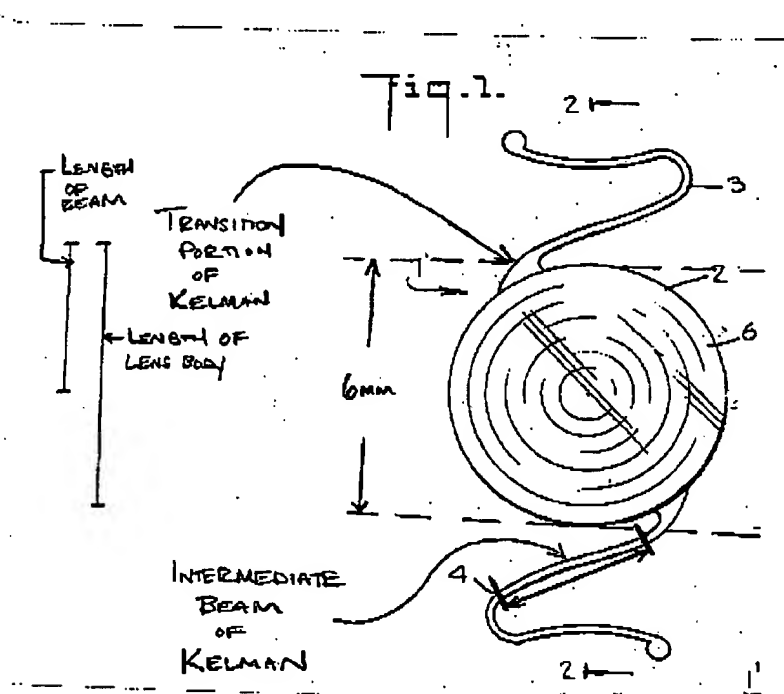
Claims 1, 8-10 and 21-40 are rejected under 35 U.S.C. 103(a) as being unpatentable over U.S. Patent No. 4,828,558 to Kelman in view of U.S. Patent No. 5,135,540 to Schepel et al. The applicant respectfully traverses this rejection, as the subject matter of the present invention would not have been obvious to one of ordinary skill in the art at the time Applicant's invention was made. Furthermore, Applicant believes that one of ordinary skill in the art would not have sufficient motivation to combine the references as suggested by the Examiner.

Independent claims 21 and 33 are currently amended to include the feature of an "ocular implant comprising... an intermediate beam, having a length of about 5.25 mm." Similarly, independent claim 1 already recites the specified intermediate beam length. Neither Kelman or Schepel teach or suggest an intermediate beam having a length of about 5.25 mm. More specifically, the invention in Schepel *does not* disclose an ocular implant having an intermediate beam of any length, and Kelman is *completely silent* as to the length of the beam illustrated therein. The Examiner relies solely on Figure 1 in Kelman to support the assertion that the intermediate beam length taught by Kelman is approximately 5.25 mm. However, this assertion cannot properly be supported. When a reference drawing does not state that the drawing is to scale and is silent as to dimensions, arguments based on measurements of the drawing are irrelevant. (MPEP § 2125) (See *Hockerson-Halberstadt, Inc. v. Avia Group Int'l*, 55 USPQ2d 1487, 1491 (Fed. Cir. 2000). Furthermore, "it is well established that patent drawings do not define the precise proportions of the elements and *may not be relied on* to show particular sizes if the specification is completely silent on the issue. (*Id.*)(emphasis added). Therefore, the

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Examiner may not properly rely on dimensions estimated from Figure 1 of Kelman as to the length of the intermediate beam of that reference, because the drawing is not labeled to scale and the specification is completely silent as to the length of the beam.

But even if Figure 1 of Kelman were properly applied as a basis of rejection (i.e., if Figure 1 were a "scale" drawing) it is clear that the beam length illustrated thereby *would not* be approximately 5.25 mm as asserted by the Examiner. The specification in Kelman provides that the optic diameter may at most be about 6 mm but is silent as to the dimensions of the intermediate beam. (Column 5, Lines 44-45). However, when the components shown in Figure 1 of Kelman are measured in relative proportion, it is clear that the beam, if it were drawn to scale, is roughly 57% the size of the optic — resulting in an intermediate beam length of no more than approximately 3.4 mm, which is significantly smaller than the presently claimed beam length. (See drawing below).



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The increased intermediate beam length of the present invention, relative to the art of record, drastically reduces the compression force transmitted to the angle tissue, such that blood supply to the anatomic angle is not cut off, and subsequent necrosis of angle tissue is avoided so as not to distort the iris' architecture. Therefore, the present invention would not have been obvious to a person skilled in the art at the time the invention was made.

And one of ordinary skill in the art would not have had sufficient motivation to combine the two references in the manner proposed. The present invention comprises two haptics wherein each haptic is connected to the artificial lens body by a smooth transition portion that is normal to the lens body. By configuring each haptic such that it is normal to the artificial lens body, the intermediate beam length is maximized, thereby creating the aforementioned advantages over the art of record. Kelman does not teach or suggest a haptic having a smooth transition portion normal to the lens body. Schepel teaches the removal of material at the transition portion between the haptics and lens body such that the resulting haptics have substantially the same width throughout. (Figure 2). However, the haptics disclosed in Schepel do not feature an intermediate beam of any length. (Figure 2). Furthermore, the removal of material taught by Schepel pertains to the relative flexibility of the overall lens and the ability for the lens to be gripped close to the lens body with an appropriate tool, rather than to increase intermediate beam length in the manner of the present invention. (Column 3, Lines 30-45; Column 4, Lines 1-8). Therefore, one of ordinary skill in the art would not have sufficient motivation to combine Kelman with Schepel as proposed by the Examiner to achieve the present invention.

Claims 6 and 7 are rejected under 35 U.S.C. 103(a) as being unpatentable over U.S. Patent No. 4,828,558 to Kelman and U.S. Patent No. 5,135,540 to Schepel et al., and further in view of U.S. Patent No. 6,132,462 to Li et al. As detailed above, one of ordinary skill in the art would not have had sufficient motivation to combine the references in the manner suggested. However, even if sufficient motivation were to exist, independent claim

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1 is allowable over the art of record for reasons set out above, and as such, dependent claims 6 and 7 are also believed to be allowable.

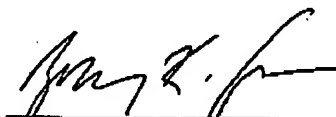
The remaining claims are believed to allowable in view of their respective additional claimed features, and their dependency from claims believed to be allowable for reasons set out above.

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**CONCLUSION**

In view of the amendments submitted herein and the above comments, it is believed that all grounds of rejection are overcome and that the application has now been placed in full condition for allowance. Accordingly, Applicant earnestly solicits early and favorable action. Should there be any further questions or reservations, the Examiner is urged to telephone Applicant's undersigned attorney at (770) 984-2300.

Respectfully submitted,



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